

In opposition to “Restoring Internet Freedom”

I am writing today in opposition to the FCC’s proposed “Restoring Internet Freedom” rules. This proposal rolls back critical protections for both consumers and small businesses alike. Major Internet Service Providers have demonstrated themselves to be more than willing to exploit their privileged market position to favor their own services (as seen in Verizon’s treatment of Netflix traffic in 2014) and protect their local monopolies. The latter point can hardly be overstated and is nicely demonstrated by the innumerable difficulties encountered by the Google Fiber project, in large part thanks to successful lobbying efforts and a sudden urge on the part of incumbent service providers in the Google’s service areas to price their services competitively.

Chairman Pai has often justified his stance against net-neutrality by claiming that the Internet service market is more competitive than web search market. I would like to focus on this claim for a moment not only because it of questionable verity, but as it is also misleading and immaterial.

To find a counter example to the claim I must look no farther than my own experience as a consumer of Internet service: despite living in an urban area, I currently have precisely one option for modern (25 Mbit/s or higher) broadband service in my home. Indeed I am not alone: according to the FCC’s own statistics over 60% of Americans have either zero or one potential broadband provider. Having lived in four cities in the past 10 years, the only time I have had choice of service providers was while I lived in Germany, where prices were lower, service more reliable, and choice plentiful despite regulation that would be described as anything but light-touch.

The Chairman’s claim is misleading as it compares one poorly functioning market to another with the unspoken assumption that regulatory action is warranted in neither case. The web search market does indeed suffer from a lack of competition, a fact that the European Commission has recognized with its recent action against Google for anti-competitive practices. However, we should note that the search and ISP markets function poorly for drastically different reasons: Google benefits immensely from network effects and the vast supply of user data that these effects have enabled it to collect over the past decade. This stands in contrast to the Internet service market, where the very concrete concerns of running a public utility imply that competition is both difficult to foster (due to extreme initial investment costs and the difficulties of navigating local regulatory environments) and inefficient (as there is only so much room on telephone poles). These latter considerations are the precise concerns that drove the drafting of the Title II statute and are why Title II is the correct designation for Internet service providers today.

Finally, Chairman Pai’s comparison is hardly relevant to the debate over broadband regulation: indeed it may be true that both the Internet search and Internet service markets see little competition in practice. Despite this, in practice I

have my choice of dozens of independent search engines and yet no such choice of Internet service provider. While the Chairman's comparison may contain a kernel of truth, the vast gulf between the practical implications of these markets' poor functioning render the comparison irrelevant for a debate over concrete policy.

Chairman Pai's self-stated goal of returning the Internet service market to a state of "self-regulation" should be deeply troubling to anyone who has observed the state of this country's already-moribund competitive landscape. If adopted, the Restoring Internet Freedom rules will allow consolidated ISPs to return to their previous throttling arrangements at the expense of consumers who have little or no choice of provider. The Internet is simply too important an economic and cultural asset to entrust to a set of companies subject to little-to-no competitive pressure and bearing a history of technically-unjustifiable traffic discrimination. This is why it is crucial that these rules are rejected and Title II classification retained.